IN THE HIGH COURT OF JUDICTURE AT MADRAS

Dated: 17.4.2007

Coram

The Hon'ble Mr.JUSTICE S.RAJESWARAN

W.P.No.5793 of 1999

1.Kuppusamy
2.Chakravarthy
3.Natarajan
4.Velmurugan .. Petitioners

vs.

1.The Addl.District Collector
South Arcot District, Cuddalore.

2.The Special Tahsildar
Adi Dravidar & Tribal Welfare
Virudachalam-Cuddalore .. Respondents

Writ petition filed under Article 226 of the Constitution of India seeking to issue a writ of Certiorarified Mandamus as stated therein.

For Petitioner : M/s.R.Srinivas

For Respondents : Mr.C.Ramesh,
Addl.Govt.Pleader.

ORDER

This writ petition has been filed under Article 226 of the Constitution of India seeking to issue a writ of Certiorarified Mandamus, calling for the records of the 1st respondent concerning the Sec.4(1) Notification issued on 5.1.1997 published in the South Arcot Vallalar District Official Gazette on 10.1.97 in W1/3983/96 under the Tamil Nadu Acquisition of Lands for Harijan Welfare Schemes Act (31/78) and quash the same and direct the respondents to forbear from acquiring the lands in R.S.No.8/7 and 8/9D measuring 0.28.5 and 0.88.0 hectares respectively belonging to the petitioners.

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2.The 1st petitioner is the father of petitioners 2 to 4. The agricultural lands in R.S.No.8/7 and 8/9D at Kolapakkam village, Cuddalore District belong to them. The lands even though were purchased in the name of the 1st petitioner it was a joint family property which was partitioned and divided by way of oral family arrangement and the different portions of the land are under the enjoyment of the writ petitioners separately. While so, the Special Tahsildar issued a notice dated 17.9.1995 in Form I and the same was served on the 1st petitioner. It was stated in the notice that the above said lands were sought to be acquired under the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, hereinafter called 'the Act 31/1978' and the objections of the persons interested in the lands were called for. The notice dated 17.9.95 also informed that an enquiry would be held by the Special Tahsildar, the 2nd respondent on 5.10.95. It is the case of the writ petitioners that even though notice was not served on petitioners 2 to 4, all the writ petitioners made a representation to the 2nd respondent informing their objections. They also appeared before second respondent on 5.10.95 and made their objections. Thereafter nothing happened and only in March 1999, they came across the issue of notification under Sec.4(1) of the Act, 1978 in the District Gazette dated 10.1.97. Immediately they filed the above writ petition for the aforesaid relief.

3.Only the 2nd respondent has filed a counter affidavit wherein it was stated that the acquisition proceedings were initiated to accommodate about 140 families of house-less, poor Adi Dravidars. As the lands were purchased in the 1st petitioner's name alone, the other petitioners could not challenge the acquisition proceedings on the basis of the oral partition.

4.Heard the learned counsel for the petitioners and the learned Addl. Government Pleader for respondents. I have also perused the documents filed and the judgments referred to in support of their submissions.

5.The learned counsel for the petitioners vehemently contended that no notice under Sec.4(2) of the Act, 1978 was sent to petitioners 2 to 4 and therefore the respondents failed to follow the mandatory provisions in the Act. The learned counsel submitted that the writ petitioners appeared before 2nd respondent and reiterated their objections and only on the basis of the report submitted by 2nd respondent, 1st respondent issued the impugned notification under Sec.4(1), but the report of 2nd respondent was not at all furnished to the writ petitioners. The learned counsel further contended that the 1st respondent who is expected to reflect the reasons for accepting the report of 2nd

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respondent and rejecting the objections of the writ petitioners, did not given reasons for acquiring the lands of the writ petitioners despite their objections. The learned counsel placed strong reliance on the decisions of the Full Bench of this court reported in 2006(4)CTC 609 (Pari,R. v. The Special Tahsildar, Adi-Dravidar Welfare, Devakkottai).

6.Per contra, the learned Addl. Government Pleader submitted that the provisions of the Act were fully complied with before issuing the 4(1) notification.

7.I have considered the rival submissions carefully with regard to facts and citations.

8.Insofar as the first objection namely, non-service of notice under Sec.4(2) on the petitioners 2 to 4 are concerned, I do not find any merits in the submissions made by the learned counsel for the writ petitioners. Admittedly, the lands were purchased in the name of 1st respondent and the same was later on partitioned among themselves by way of oral partition only. In such circumstances, the notice issued to the father, i.e., the 1st petitioner herein is not at all vitiated. Further, in their objections dated 5.10.95 sent in response to the notice dated 17.9.95 it was admitted that the 4(1) notice contained the names of writ petitioners 2 to 4 also. A perusal of the notice would also show that their names found place in the notice. Further, all the petitioners filed their objections and participated in the enquiry. Therefore, the first objection made by the learned counsel for the writ petitioners assailing the 4(1) notice fails.

9.It is the case of the writ petitioners that the report of 2nd respondent was not furnished to them to enable them to make a further representation to 1st respondent. The counter filed by 2nd respondent is conspicuously silent in this regard. Therefore, it is to be considered that the report of 2nd respondent was not at all furnished to the writ petitioners. But that itself will not vitiate the entire acquisition proceedings. The court has to find out whether by not furnishing the report any prejudice is caused to the writ petitioners.

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10.In their objections dated 5.10.95, the writ petitioners have specifically stated that they have been cultivating paddy, Manila, Sesame and also sugar-cane. Reference was made to 93 palm trees standing on the land which are 25 years old, apart from other big trees. They have also pointed out the alternative uncultivable lands available near their lands. In the light of the above objections, I am of the considered view that the writ petitioners have a right to know how their objections were overruled by 2nd respondent in his report submitted to 1st

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respondent. Therefore, the non-furnishing of the report of 2nd respondent to the writ petitioners, in this case has definitely prejudiced the interest of the writ petitioners and therefore the acquisition proceedings are vitiated.

11.The 1st respondent is also expected to apply his mind independently to the report and give reasons for accepting the report and rejecting the objections. In the present case, neither the 4(1) notification reflected the reasons of 1st respondent for rejecting the objections nor any communication was sent to them containing their reasons for rejecting their objections. But by merely omitted to send or show the reasons for rejecting their objections, would not mean that the acquisition proceedings are vitiated. It is always open to the authorities concerned to prove before this court that there has been application of mind and the reasons are available in the relevant records relating to the acquisition. In the case on hand, no counter affidavit has been filed by 1st respondent. While the counter affidavit of 2nd respondent contains irrelevant information couched in an undecipherable language, there is not even a passing reference about the application of mind by the authorities for rejecting the objections of the writ petitioners. The records were also not produced before the court to prove and satisfy the court that there has been an application of mind and there are reasons available relating to acquisition proceedings. Therefore, it has to be inferred that the 4(1) notification has been issued by 1st respondent mechanically without application of mind.

12.In the Full Bench judgment cited supra, three questions were referred to the Bench for determination which are as follows:

> "(i)Is it necessary for the collector to give a personal hearing to the owner in the context of his objections and the remarks of the Tahsildar?
>
> (ii)Is the owner entitled to a copy of the report of the Special Tahsildar or not?
> (iii)Should the Collector record his reasons in his order while dealing with the objections of the owner?"

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13.For the first question, the Full Bench answers as below:

> "8.From a combined reading of the provisions contained in Section 4, Rule 3 and the Form-I, it is thus apparent that the notice to show cause can be issued either by the District Collector or by the authorised officer. Where such notice is

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issued by the District Collector, all subsequent proceedings are continued before him and ultimately the Collector takes a decision on the basis of enquiry held by him. However, where such notice is issued by the authorised officer, the enquiry is conducted by such officer, who is thereafter required to make a report containing his recommendations on the cause shown by the owner and the decision is required to be taken by the District Collector."

14.Insofar as the second question is concerned, the Full Bench decided as under:

"37.The desirability of furnishing a copy of the report to enable the land owner to make a further representation to the District Collector does not mean that in every case, where such report has not been furnished, the ultimate order passed by the District Collector deciding to acquire the land is automatically vitiated. The scope for judicial interference in the matter relating to acquisition of land obviously being very limited, the Court in each case is required to find out whether non-furnishing of the report in any way has prejudiced the person concerned. The object of furnishing the report and affording further opportunity to the land owner to make a further representation is obviously to pinpoint any deficiency in the report of the authorised officer. If any particular aspect has been highlighted by the land owner and has not been considered by the authorised officer, the land owner would get a further opportunity to highlight such aspect before the District Collector. In other words, if the authorised officer has considered the relevant aspects indicated by the objector and made his recommendation, merely because a copy of such report is not furnished and no further opportunity is given to the land owner, may not be a ground to quash the land acquisition proceedings. On the other hand, if important aspects, which have been highlighted by the land owner, have been ignored by the authorised officer, it may be reasonable to

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infer non-furnishing of such report and non-offering of opportunity to make further representation might have vitiated the ultimate decision of the District Collector. These are matters to be considered on the basis of the facts and circumstances in each acquisition and it should not be construed that as a matter of law in every case where copy of the report has not been furnished and opportunity of making further representation had been denied, it is sufficient to quash such acquisition. Ultimately the Court has to judge the prejudice caused to such person by keeping in view the facts and circumstances in particular case."

"38.So far as Question No.2 is concerned, since it is construed by us that it is necessary for the collector to give opportunity to the owner to file further representation on the report/recommendation made by the authorised officer, such copy of the report/recommendation is required to be furnished. We also add that in view of the provisions contained in the Right to Information Act, 2005 the owner would be entitled to copy of the report of the authorised officer."

15.With regard to the necessity of giving reasons by the Collector is concerned, it is held as follows:

"42.However, it is necessary to enter a small caveat. The observation made by the Division Bench or the single Judge regarding requirement to indicate reason while passing the order has to be understood in the context of non-application of mind. Even though in a given case the order which is communicated to the land owner does not indicate any reason why the objection has been rejected, if the application of mind is reflected in the file even by way of notings and endorsements, the ultimate decision to acquire the land cannot be said to be vitiated merely because the order which is communicated to the land owner/objector does not contain any detailed reasons. The requirement is that the

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materials on record, that is to say the relevant file, should indicate application of mind to the relevant facts and circumstances and not passing of a formal reasoned ordered as is required in judicial or quasi-judicial proceedings. The function obviously being administrative in nature, it is futile to expect furnishing of detailed reasons in the order which is communicated to the person. It is necessary to enter such caveat lest it may be construed that in every case, where the order of rejection communicated to the land owner does not contain the reasons, the proceeding stands vitiated. Ultimately the Court is required to find out in each case whether there has been application of mind. Therefore, the brief reasons, which are contemplated, can be given either in the file in the shape of notings, endorsements, etc., or even can be reflected in the order. But, mere non-reflection of reasons in the order communicated or in the notice published in the Gazette, would not be sufficient to hold that there has been non-application of mind and the question as to whether there has been application of mind or non-application is required to be considered on the basis of the return filed and the relevant file to be produced before the Court."

16.The Full Bench finally concluded as under:

"43.In view of the aforesaid discussion, our conclusions are as follows:
The owner should be furnished with a copy of the report/recommendation of the authorised officer. Thereafter, he should be given two weeks' time to make further representation, if any, before the District Collector. It is not necessary for the District Collector to give a further personal hearing or make any further enquiry. However, mere non-furnishing of the report would not have the ipso facto effect of vitiating the proceedings and the question of prejudice to the land owner is required to be considered in each case depending upon the facts and circumstances. The District Collector is expected to reflect the reasons, but merely because the communication to the

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land owner does not contain the reasons, the decision of the Collector is not ipso facto vitiated and it would always open to the concerned authority to prove before the Court, if such action of the collector is challenged, that there has been application of mind and the reasons are available in the relevant records relating to such acquisition. The necessity to record the reasons is applicable where the Collector himself makes the enquiry and also where the Collector takes an appropriate decision on the basis of the report/recommendation made by the authorised officer."

17.If the principles laid down by the Full Bench in the above decision is applied to the facts of the present case, I have to necessarily hold that by not furnishing a copy of the report/recommendation of 2nd respondent to the writ petitioners and the respondents by their failure to prove before this court there has been application of mind and there are reasons available in the relevant records, the acquisition proceedings are vitiated and the notice issued by 1st respondent, which is impugned in the writ petition is liable to be quashed. Accordingly, Sec.4(1) notification issued on 5.1.97 in the District official Gazette under the Tamil Nadu Act 31 of 1978 is hereby quashed.

18.The prayer in the writ petition is not only for quashing the 4(1) notification but also for a direction directing the respondents, forbearing them from acquiring the lands belonging to the writ petitioners. This, in my view, cannot be granted at all. Whenever lands are required by the Government for the welfare for Harijans, it is open to them to acquire the same after strictly following the provisions of the Act in the light of the above said decision of the Full Bench of this court and this court cannot direct the authorities not to follow the provisions of any Act as prayed for by the writ petitioners.

19.In the result, the writ petition is allowed in the above said terms. No costs. W.M.P.No.8422/1999 is closed.

sks

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Addl.District Collector
  South Arcot District, Cuddalore.

2.The Special Tahsildar
  Adi Dravidar & Tribal Welfare
  Virudachalam-Cuddalore

+ 1 cc to the Government Pleader, SR No.25620

MS(CO)
SR/3.5.2007 order,
W.P.5793/99.

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